

***Consumer Law Center***  
*of the South*

**The High House  
309 Sycamore Street  
Decatur, GA 30030**

**(404) 373-4562  
Pager (770) 215-1805  
Fax (404) 378-0717**

December 8, 1997

Cynthia L. Johnson  
Director  
Cash Management Policy and Planning Division  
Financial Management Service  
U.S. Department of the Treasury  
Room 420  
401 14th Street, S.W.  
Washington, DC 20227

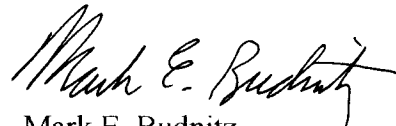
Re: Proposed Rulemaking To Implement EFT 99,  
Pursuant To The Debt Collection Improvement Act of 1996

Dear Ms. Johnson:

I have enclosed the Comments of the Consumer Law Center of the South, Inc. to the proposed rule implementing EFT 99.

If you wish to contact me, my direct phone number is (404) 651-2135.

Sincerely,



Mark E. Budnitz  
Chairman of Board of Directors  
Consumer Law Center of the South

EFT  
#041

**COMMENTS TO THE  
FINANCIAL MANAGEMENT SERVICE  
DEPARTMENT OF THE TREASURY  
PROPOSED REGULATION TO IMPLEMENT "EFT 99"**

December 8, 1997

Submitted By:  
Mark E. Budnitz  
Chairman of the Board of Directors  
Consumer Law Center of the South, Inc.  
The High House  
309 Sycamore Street  
Decatur, Georgia 30030  
(404) 651-2135

The Consumer Law Center of the South, Inc. is a nonprofit organization incorporated in the state of Georgia in 1995. The Center's mission is to advocate for consumer protection through consumer education, legislative reform, involvement in the regulatory process, and litigation support. The Center has targeted the activities of fringe bankers as an issue of special concern because of the devastating impact fringe banking has upon the most vulnerable consumers: the poor, the unsophisticated, those with a poor command of English, etc. The Center's Executive Director, Melissa Burkholder, has been an advocate for the elderly for many years, and has launched an extensive educational effort aimed at the public and legislators to inform them of the predatory practices of fringe bankers such as pawnbrokers, check cashers, rent-to-own companies, etc. The Chairman of the Center's Board represented welfare recipients for many years, and has lectured, testified, and written articles about electronic fund transfers since 1978. Since 1994, he has been actively involved with issues surrounding electronic benefits transfers as a member of the Georgia Department of Human Resources Electronic Benefit Transfer Client Advocate Advisory Council.

Based on our experience with benefits recipients, electronic payment systems and fringe bankers, we urge Treasury to strengthen the rule by:

1) Ensuring that all recipients have access to an account at a reasonable cost and are given the same consumer protections as other account holders at the same financial institution.

2) Providing waivers, not only on the basis of physical disability or geographic barriers, but also on the basis of mental, educational, and language difficulties.

### **ALL RECIPIENTS MUST HAVE AFFORDABLE ACCOUNTS AND THE SAME CONSUMER PROTECTIONS AS OTHER ACCOUNT HOLDERS**

The Debt Collection Improvement Act requires Treasury to implement EFT 99, whereby recipients of government benefits will receive their benefits via electronic fund transfers. The Act requires that in order to accomplish this, recipients must have an account at a financial institution. The Act makes no distinction between accounts which recipients obtain on their own, voluntary accounts, and accounts which Treasury obtains for those who do not have accounts, the "unbanked."

We object to Treasury's narrow construction of the EFT 99 statute, in particular the decision to propose no regulatory provision to ensure that those individuals who obtain an account on their own will have the advantages of access to accounts at a reasonable cost and with the same protection as other consumers at the same financial institution. 62 Fed. Reg. 48723.

We cannot understand the rationale for the distinction Treasury proposes to make between those who obtain accounts on their own and those unbanked recipients for whom Treasury provides an account. Treasury states that it does not want to get involved in "widespread price regulation." But applying the "reasonable cost" requirement of the EFT 99 legislation to all recipients would not require price regulation for those recipients who obtain an account on their own, any more than it will require price regulation in regard to those financial institutions chosen by Treasury to provide accounts for the unbanked. This "reasonableness" requirement of the statute does not impose a new and unduly onerous burden upon financial institutions. It is a standard with which those institutions are familiar because it is consistent with the "observance of reasonable commercial standards" provisions of the Uniform Commercial Code to which financial institutions have voiced no opposition. See UCC Sections 3-103(a)(4), defining good faith, and 3-103(a)(7), defining ordinary care.

All recipients need the protection of the reasonable cost requirement. Bank fees have been rising dramatically for several years. These fees often seem to have little relationship to actual bank costs. See *Perdue v. Crocker National Bank*, 38 Cal.3d 913 (1985); *Best v. United Bank of Oregon*, 739 P.2d 554 (1987). In addition, banks often disclose their fees in a confusing manner, so it is difficult for consumers to understand what the fees are. Karen Hube & Matt Murray, "New Charges Make Banking More Confusing," *Wall Street Journal*, Nov, 11, 1997. Recipients of government benefits are often individuals who can least understand confusing charges, and can least afford fees that amount to price gouging. The purpose of the Debt Collection Improvement Act provisions requiring EFT 99 is to provide the government with a more efficient, less expensive way to distribute benefits, and to provide recipients with an affordable, accessible, and safe means of receiving those benefits. Nowhere does the statute mandate two separate sets of standards, one for those with accounts, and another for the unbanked for whom Treasury must provide accounts.

In the Federal Register proposal, Treasury does not even offer a justification for refusing to extend the consumer protection provision in the statute to those who obtain accounts on their own. Every recipient should be entitled to the same consumer protections as other account holders at the same financial institution. Nothing in the law or sound policy supports permitting financial institutions to establish accounts for recipients which treat them as second class customers.

Our fear is that recipients who get accounts on their own will establish an account with a financial institution which in turn will provide that the funds must be withdrawn from a fringe banker: a check casher, finance company, rent-to-own company, pawn shop, etc. These recipients likely will be subjected to unreasonable charges and unfair practices. See generally Michael Hudson, Merchants of Misery (1996). All recipients need the protections which the statute provides. Consequently, Treasury should allow only regulated financial institutions to receive electronic benefits payments. (It may be appropriate to grant limited exceptions to other types of institutions which do not fall into the category of fringe bankers. The United States Postal Service is a possible example.) Fringe bankers should never be allowed as the only source

a recipient has to access funds.

## **THE WAIVER PROVISIONS SHOULD BE BROADENED**

Treasury proposes to allow waivers for those who certify a hardship based on a physical disability or a geographic barrier. We urge Treasury also to include those who certify a hardship based on mental disability, limited education, or lack of English fluency. Treasury refuses to include the latter categories because "these factors are not uniquely associated with the use of EFT." Moreover, Treasury asserts, "the benefit agencies and the financial industry have developed...educational materials that assist recipients." 62 Fed. Reg. 48719. Besides, "these factors can affect an individual's ability to use any method of payment, whether check or EFT." 62 Fed. Reg. 48718.

In our experience, disadvantaged persons, and especially the elderly, are often intimidated by electronic equipment, such as ATMs and POS terminals, and access devices with PINs, such as ATM and debit cards. They are far more familiar and comfortable with checks. We are curious that Treasury cites no studies to support its assumption that people who have mental, educational and language problems are just as comfortable with electronic transfers as with check transactions.

In fact, reports and studies indicate that many individuals are very hesitant to use electronic payment systems. For example, researchers at Georgia Institute of Technology have found that two-thirds of persons over 64 do not use ATMs because they are intimidated by technology. Karin Miller, "Banking-Helpless? Look for a Class in ATM 101," Commercial Appeal, Memphis, Tenn., Aug. 31, 1997. (An American Banker/Gallup Consumer Survey confirms that two-thirds of persons over 64 do not use ATMs. Valerie Block, "ATM Cards Hit a Wall; The Next Breakthrough Is Years Away, Bankers Say," American Banker, Jan. 2, 1997. The survey sample presumably included primarily middle class persons fluent in English, and without mental disabilities.)

The Royal Institute for the Blind has found that the elderly and disabled have a very hard time inserting cards into slots. Persons who wear bi-focals have difficulty seeing the ATM screen because such lenses are not suitable for the distances involved in using an ATM. Simon Vail, "Life can be terminally easier with smart cards," The Times, June 26, 1996.

Moreover, Treasury's reliance on education is misplaced. Having been directly involved in monitoring the efforts of the subcontractors who designed educational and training materials for EBT, we are far less sanguine than Treasury about the ability of public education to enable persons to overcome barriers of mental disability, limited education, and lack of language fluency. Researchers have found that individuals need hands-on training with actual ATMs or demonstration machines; pamphlets are not adequate. Miller, *supra*. In regard to language difficulties, Treasury points out that "many ATMs and POS terminals offer the choice of...the

predominant language as well as English.” 62 Fed. Reg. 48719. However, it is also true that many ATMs do not offer that choice. In addition, a choice between English and the predominant language will not help a recipient who is fluent in a language other than those two.

## **Conclusion**

For these reasons, the Consumer Law Center of the South urges Treasury to revise its proposed regulations to implement EFT 99 in accordance with the statute and the recommendations included in these Comments.